

**ST 05-18**

**Tax Type: Sales Tax**

**Issue: Books And Records Insufficient**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC, INC.,  
Taxpayer**

**No. 04-ST-0000**

**IBT #: 0000-0000**

**NTL # 00 00000000000000**

**00 00000000000000**

**00 0000000000000000**

**00 0000000000000000**

**Tax pds. 1/99-12/01**

**Charles E. McClellan**

**Administrative Law Judge**

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**RECOMMENDATION FOR DECISION**

**Appearances:** George Foster, Special Assistant Attorney General, for the Illinois Department of Revenue (the "Department"); Wayne B. Giampietro of Sitt, Klein, Daday, Aretos & Giampietro, LLC for ABC, Inc. ("Taxpayer").

**Synopsis:**

This matter arose from a protest filed to four Notices of Tax Liability issued to Taxpayer by the Department for the periods beginning with January 1999 through December 2001. An evidentiary hearing was held on June 8, 2005. The only witness called to testify was Gary Kelo, the Department's auditor who conducted the audit that resulted in the issuance of the Notices of Tax Liability at issue.

I recommend that the Notices of Tax Liability be made final.

**Findings of Fact:**

1. The Department issued the Notices of Tax Liability identified above by the numbers 0000000000000000 and 0000000000000000 to Taxpayer on January 27, 2004. Dept. Ex. No. 1.
2. The Department issued the Notices of Tax Liability identified above by the numbers 00 0000000000000000 and 00 0000000000000000 on February 6, 2004.  
*Id.*

**Conclusions of Law:**

The admission into evidence of the records of the Department under the certification of the Director at a hearing before the Department or any legal proceeding establishes the Department's *prima facie* case. 35 ILCS 120/4, 120/8; *Copilevitz v. Department of Revenue*, 41 Ill. 2d 154, 242 N.E.2d 205 (1968); *Central Furniture Mart v. Johnson*, 157 Ill. App. 3d 907, 510 N.E.2d 937 (1st Dist. 1987).

In this case, when the Department's Notices of Tax Liability (Dept. Ex. No. 1) were entered into the record under the certificate of the Director its *prima facie* case was established, and the burden shifted to the taxpayer to overcome the Department's *prima facie* case. *Anderson v. Dept. of Finance*, 370 Ill. 225, 18 N.E.2d 206 (1938); *Masini v. Dept. of Revenue*, 60 Ill. App. 3d at 14, 376 N.E.2d 325. 35 ILCS 120/4

In order to overcome the presumption of validity attached to the Department's *prima facie* case, Taxpayer is required to introduce into the record competent evidence, identified with its books and records showing that the Department's records are incorrect. *Masini v. Dept. of Revenue*, 60 Ill. App. 3d at 15, 376 N.E.2d 324 (1<sup>st</sup> Dist. 1978); *Copilevitz v. Dept. of Revenue*, 41 Ill. 2d 154, 242 N.E.2d 205 (1968); *Dupage Liquor*

*Store, Inc. v. McKibbin* 383 Ill. 276, 48 N.E.2d 926 (1943); *Howard Worthington, Inc. v. Department of Revenue*, 96 Ill. App. 3d 1132, 421 N.E.2d 1030 (2<sup>nd</sup> Dist. 1981). A taxpayer's testimony alone will not overcome the Department's *prima facie* case. *Central Furniture Mart v. Johnson, supra*. To overcome the Department's *prima facie* case the taxpayer must present consistent and probable evidence identified with its books and records. *Id.*

The only witness Taxpayer called at the hearing in this matter was the Department's auditor who testified about the conduct of his audit. Taxpayer offered no documents for admission into evidence, so Taxpayer failed to overcome the Department's *prima facie* case. At the conclusion of the hearing, Taxpayer's counsel stated that, "We have not ever stated that we contested the findings, the factual findings of the audit." Tr. pp. 27, 29.

Taxpayer's arguments were directed solely at the amount of interest assessed in this case. Taxpayer did not argue that the interest calculations were incorrectly made. Taxpayer's only argument is that the Department's interest calculations are not fair and excessive and violate Taxpayer's due process rights.

Interest on tax assessments is mandated by statute. 35 ILCS 5/1003. Taxpayer offered no authority in support of its fairness argument, however, and a search of the Illinois case law indicates that there is none.

Taxpayer has failed to overcome the Department's *prima facie* case. Therefore, I recommend that the Notices of Tax Liability be made final.

**ENTER:      August 9, 2005**

**Charles E. McClellan  
Administrative Law Judge**